IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1227 of 1984

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
KHANDUBHAI CHHITHABHAI & 3 - Opponent(s)

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Appearance :
MS MITA PANCHAL, APP, for Appellant(s)

MR NN PRAJAPATI for Opponent(s) :

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/11/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgement and order dated 5th July 1984 passed by learned Judicial Magistrate, First Class, Chikhali, Valsad in Criminal Case No.666 of 1982 whereby the respondents-original accused were acquitted of the charges levelled against them.

2.0 The prosecution case, in short, is that 9th March 1982 at about 1630 hours the respondent nos.1 and 2 has damaged the sugar cane in the field of Soma Lallu. When they were restrained from doing so, they have abused the complainant and attacked with wooden stick and Kuwadi. It is alleged that the complainant received head injuries and fracture on his right hand. It was also alleged that the respondent nos.3 and 4 have also abused the complainant and his family members. Hence the aforesaid complaint came to be filed against the respondents for the alleged commission of offences punishable under sections 325, 323, 504 and 114 of IPC.

2.2 Necessary investigation was carried out and statements of witnesses were recorded. At the end of investigation, chargesheet was filed against the respondents and the case was numbered as Criminal Case No.666 of 1982 in the Court of learned Judicial Magistrate, First Class, Chikhali.

2.3 For the purpose of proving the case the prosecution has examined the complainant Chhotubhai Chitabhai (Exh.12), Somabhai Lallubhai (Exh.14) Amrutbhai Chaganbhai, Panch witness at Exh.15. Dr. Dilipbhai Ishwarbhai was exanied at Exh.21 who has issued the certificate to Somabhai Lallubhai for the injury. The injury certificate is produced at Exh.22. After considering the evidence and recording the statement under section 313 and closing purshis the trial court has acquitted the original accused by giving benefit of doubt. It is against the said judgement and order of acquittal the present appeal has been filed.

3.0 Learned Advocate for the appellant has contended that the trial court has committed an error in not believing the prosecution witnesses and has wrongly acquitted the accused of the charges levelled against him. She submitted that the learned Magistrate has committed an error in not appreciating the medical evidence on record which proved that Soma Lallu has sustained injury.

4.0 Heard the learned Advocates for the appellant and respondent and perused the relevant record of the case. Before proceeding further, it is required to be noted the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its

own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

5.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.1 Similar principle has been reiterated by the Hon'ble

Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.2 Further, in the case of M.S. Narayana Menon Vs. State of Kerala, reported in (2006) 6 SCC 39, the Apex Court held that in case of appeal against acquittal, where two view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

6.0 In the present case, the trial court has found that the panchnama prepared was not in consonance with the oral evidence on record. It was proved by appropriate evidence that the Panchnama was prepared subsequently. There is also contradiction about the preparation of panchnama in Exhibit 16 and 17. The prosecution has failed to point out any plausible reason for this discrepancy. Further, as regards the injury is concerned,the doctor opined that the said injury is possible while traveling on a bicycle. Therefore, taking into overall facts of the case the learned Magistrate has given benefit of doubt to the respondents. Learned Advocate for the appellant has failed to point out anything from the record to reverse the finding of the trial court in any manner whatsoever.

7.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

8.0 It is also required to be noted that in the case of State of Maharashtra V. M/s Gopalprasad Govindprasad Agarwal, reported in AIR 1999 SC 1507, having regard to the fact that the offences were committed almost 20 years ago, the Apex Court refrained from setting aside the acquittal order. In the present case the incident is of 25th October 1983 and almost 24 years have elapsed. Therefore, even on this ground, I am of the view that it is not desirable to interfere with the findings of the trial court.

9.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or

> to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

10.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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